TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 168.

ELIZABETH S. OVERBY, LEONORA H. PACE, KATE CULBERSON, PAUL BLECKLEY, LOGAN BLECKLEY, AND HARALSON BLECKLEY, PLAINTIFFS IN ERROR,

vs.

FANNIE H. GORDON.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 9, 1898.

(17,214.)

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1 In the Court of Appeals of the District of Columbia.

ELIZABETH S. OVERBY ET AL., Appellants,
vs.
FANNIE H. GORDON. } No. 809.

Supreme Court of the District of Columbia.

In the Matter of the Last Will and Testament of HUGH A. HARALSON. No. 39956. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

SAVANNAH, GA., *Aug.* 14, 1895.

It is my will and desire that after my death the interest on my bonds be for the sole use and benefit of my sister Mrs. Fannie Gordon and that after her death the interest on my bonds be for the sole use and benefit of her daughter and my niece Carrie Lewis Gordon.

It is my will and desire that none of my securities be sold or the investment changed until they mature.

If Carrie Lewis Gordon should have no children at her death these securities with the residue of my estate to be divided to my heirs-at-law.

HUGH A. HARALSON.

Witness:
CHAS. A. MACATEE.

Form 30.

DISTRICT OF COLUMBIA, *To wit:*

On the 15th day of November, 1895, came Levi Maish and made oath on the Holy Evangels of almighty God that he does not know of any will or codicil of Hugh A. Haralson, late of said District, deceased, other than the aforegoing instrument of writing dated August 14, 1895, and that he received the same from Burton Smith, Esq., by mail, and said Hugh A. Haralson died on or about the — day of August, 1895.

LEVI MAISH.

2 Sworn to and subscribed before me—

M. J. GRIFFITH,
[SEAL.] *Notary Public for the District of Columbia.*

Form 14.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to W. W. Gordon, Jr., of Savannah, Georgia, Greeting:

Having full faith in your prudence and competency, we have appointed you commissioner, and by these presents do authorize you to examine Chas. A. Macatee, represented to be at present residing in Savannah, Georgia, as a witness in the matter of proving the last will and testament of Hugh A. Haralson, late of the District of Columbia, deceased, which hath been exhibited for probate to the supreme court of the District of Columbia, in support of the proof of said will, on oath, upon the interrogatories annexed to this commission, to take and certify the depositions of the said witness and return the same to the supreme court of the District of Columbia aforesaid, addressed to the register of wills, Washington, D. C.

Witness Alexander B. Hagner, justice holding the special term of the said supreme court for orphans' court business, this
[SEAL.] 27th day of February, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

Test: J. NOTA McGILL,
Register of Wills for the District of Columbia.

Interrogatories to be administered to Chas. A. Macatee, represented to be at present residing in Savannah, Georgia, witness in the matter of proving the last will and testament of Hugh A. Haralson, late of the District of Columbia, deceased, now pending before the supreme court of the District of Columbia, under and in pursuance of the commission hereto annexed.

First interrogatory. What is your name, age and occupation, business or profession, and where do you reside?

Second interrogatory. Look at the instrument of writing hereto annexed, bearing date the 14th day of August, in the year of our Lord one thousand eight hundred and ninety-five, purporting to be the last will and testament of Hugh A. Haralson, late of the District of Columbia, deceased, and say whether or not you were present as a witness at the time of the execution of the same. Did you see the said Hugh A. Haralson sign said will?

Third interrogatory. Did the said Hugh A. Haralson publish, pronounce, and declare the same to be his last will and testament?

Fourth interrogatory. Was he at the time of so doing, to the best of your apprehension, of sound and disposing mind and capable of executing a valid deed or contract?

Fifth interrogatory. Did you sign your name as a witness
3 to said will in the presence and at the request of the said Hugh A. Haralson?

(NOTE.—Commissioners must not in any way mark any will or codicil, nor attach any paper thereto.)

In the Supreme Court of the District of Columbia.

In the Matter of Proving the Last Will and Testament of HUGH A. HARALSON.

STATE OF GEORGIA, }
Chatham County. }

Be it remembered that at an examination of a witness, begun and held on the 29th day of February, 1896, and continued from time to time by me until the 29th day of Feb'y, 1896, when the within depositions were taken, I, William W. Gordon, Jr., of said county and State, did cause Chas. A. Macatee, a material witness, to be present at room 10, Merchants' Bank building, Savannah, Georgia, to testify on the part and behalf of the (propounders of said will) in a certain cause now pending in the supreme court of the District of Columbia, at the special term thereof for the holding of orphans' court business, wherein the cause at issue is "In the matter of proving the last will and testament of Hugh A. Haralson."

CHAS. A. MACATEE, of the age of 48 years, a witness for (the propounders of the will), being produced, sworn, and examined, deposeth and saith:

To the first interrogatory he answers:
Name, Chas. A. Macatee; age, 48 years; occupation, special agent United States Treasury Department. I reside temporarily in Savannah.

To the second interrogatory he answers:
I was present as a witness at the time of the execution of the instrument in writing hereto annexed, bearing date the 14th day of August, 1895, purporting to be the last will and testament of Hugh A. Haralson. I did see the said Haralson sign said will.

To the third interrogatory he answers:
He did publish, pronounce, and declare the same to be his last will and testament, and wrote and signed the same with his own hand in my presence.

To the fourth interrogatory he answers:
I think so; perfectly so.

To the fifth interrogatory he answers:
I did sign this instrument in writing, as a witness to said will, in the presence and at the request of the said Hugh A. Haralson.

CHAS. A. MACATEE.

4 STATE OF GEORGIA, }
Chatham County. }

I, W. W. Gordon, Jr., the commissioner duly appointed under date Feb'y 27th, 1896, to take the testimony of Chas. A. Macatee, for use as evidence in the matter of proving the last will and testament of Hugh A. Haralson, at the special term of the supreme court of the District of Columbia for orphans' court business, do hereby certify that in pursuance of the annexed commission the foregoing

depositions *were* taken down by me and reduced to writing in the presence of and for the statement of the witness at the time and place designated in the caption thereof, and *were* then and there by me read over to the witness and by him subscribed in my presence, who was then and there attending, the witness having been by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause. I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

WM. W. GORDON, JR., [SEAL.]
Commissioner to Take the Testimony of Chas. A. Macatee.

Petition. Filed January 23, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Last Will and Testament of HUGH A. HARALSON. No. 6967.

The petition of Fanny H. Gordon respectfully represents as follows:

1. She is a citizen of the United States and of the State of Georgia, but is temporarily resident in the District of Columbia with her husband, John B. Gordon, a Senator of the United States from the said State, and will be so resident for the greater part of the time until and including at least the fourth day of March, A. D. 1897.

2. The above-named Hugh A. Haralson, though a citizen of the State of Georgia, was at the time of his death, and for several years prior thereto had been, a resident of the District of Columbia, and the said Haralson died on the 23rd day of August, A. D. 1895, at the village of Kirkwood, in the county of De Kalb, State of Georgia, in which State he temporarily was in the discharge of his duties as an official of the Government of the United States.

3. The said Haralson at the time of his death was possessed of a personal estate consisting chiefly of bonds and stocks, and of the value of about ten thousand dollars ($10,000), all of which, except an insignificant part thereof, was at the time of his death situate in the District of Columbia.

5 1.

4. The said Haralson on, to wit, the 14th day of August, A. D. 1895, made, published, and declared in due form of law, as and for his last will and testament, a paper-writing now on file in the office of the register of wills of the District of Columbia, which is hereby referred to and prayed to be taken as part hereof.

5. In and by the said paper-writing the said Haralson named no person as the executor thereof, but therein and thereby he left his entire estate to the petitioner for life, with remainder to her daughter, Caroline L. Gordon, and in case the said Caroline L. Gordon should die without issue, then to his next of kin at law.

6. The said Haralson left surviving him as his said next of kin the following persons, namely: (1) a sister, Elizabeth S. Overby, widow of Basil H. Overby, resident in the city of Philadelphia, State of Pennsylvania; (2) a sister, the petitioner; (3) a sister, Leonora H. Pace, wife of James M. Pace, resident in the city of Covington, State of Georgia; and (4) Kate Culberson, wife of Hubert Culberson; (5) Paul Bleckley, (6) Logan Bleckley, and (7) Haralson Bleckley, all of the last four named being the children of a deceased sister, Caroline C. Bleckley, and resident in the city of Atlanta, State of Georgia.

7. The said Elizabeth S. Overby was the eldest sister of the said Haralson, and the petitioner is his sister next in seniority in point of age, and is upwards of twenty-one (21) years of age, and the said Elizabeth S. Overby and Leonora H. Pace are non-residents of the District of Columbia.

2.

and liable to continue such throughout the period necessary to be and that will be occupied in the administration of the estate of the said Haralson.

8. The petitioner has an adult son, Hugh H. Gordon, an attorney and counsellor at law, resident and practicing his profession in the District of Columbia, who is the eldest person of all the nephews and nieces of the said Haralson.

The premises considered, the petitioner therefore prays:

First. That the paper-writing aforesaid may be duly admitted to probate and record as the last will and testament of the said Haralson, and that to that end all necessary citations may issue and proceedings be had.

Secondly. That letters of administration with the will annexed may be granted on the estate of the said Haralson to the petitioner or her said son or to both, or to some other proper person, according to the form of the statute in such case made and provided; and,

Thirdly. That the petitioner may have such other and further relief in the premises as the nature of the case may require.

FANNY H. GORDON.

HENRY E. DAVIS,
LEVI MAISH,
Proctors for Petitioner.

6 DISTRICT OF COLUMBIA, *ss*:

Before me, a notary public in and for the District aforesaid, personally appeared Fanny H. Gordon, who, being first duly sworn, deposes and says that she has heard read

3.

the foregoing petition by her subscribed, and knows the contents thereof, and that the statements therein made of her own knowledge are true and those made on her information and belief she believes to be true.

FANNY H. GORDON.

Subscribed and sworn to before me this 7th day of January, A. D. 1896.

[SEAL.] FRANK B. MARLOW,
Notary Public D. C.

Caveat. Filed March 6, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Last Will and Testament of HUGH A. HARALSON, Deceased.

A paper-writing bearing date August 14, 1895, purporting to be the last will and testament of Hugh A. Haralson, deceased, having been propounded for probate before said court as such last will and testament, the undersigned, [as attorneys for]* Elizabeth S. Overby, Leonora H. Pace, wife of James M. Pace; Kate Culberson, wife of Hubert Culberson; Paul Bleckley, Logan Bleckley, and Haralson Bleckley, the next of kin of said deceased, other than Fanny H. Gordon, the petitioner for the probate aforesaid and named as such in the said petition, do hereby contest the said probate and the validity of the said paper-writing so purporting to be such last will and testament, and for that purpose allege against the validity of such alleged will as follows:

First. That the said paper-writing is not the last will and testament of the said deceased.

Second. That the said deceased was not at the time of his death a resident of the District of Columbia; and,

Third. That at the time of his death the said deceased was a citizen and resident of the State of Georgia.

LOGAN BLECKLEY.
HARALSON BLECKLEY.
PAUL BLECKLEY.
KATE CULBERSON.
LEONORA H. PACE.

Signed by each of the subscribers in presence of—
C. B. REYNOLDS,
[SEAL.] *Notary Public, Fulton Co., Ga.*

7 *Issues. Filed April* 10, 1896.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of HUGH A. HARALSON, Deceased.
No. 6967.

Upon consideration of the caveat in the above-entitled cause, it is this 10th day of April, A. D. 1896, ordered that the following issues be tried by the court, sitting as a circuit court, and a jury, namely:

[* Words enclosed in brackets erased in copy.]

1. Was the said deceased at the time of his death a resident of the District of Columbia?

2. Was the said deceased at the time of his death a citizen and resident of the State of Georgia?

3. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament a resident of the District of Columbia?

4. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament a citizen and resident of the State of Georgia?

5. At the time of his death did any considerable part of the personal estate of the said deceased lie within the District of Columbia?

A. B. HAGNER,
Asso. Justice.

Findings of Jury. Filed April 1, 1898.

Supreme Court of the District of Columbia.

THURSDAY, *February* 10, 1898.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

FANNIE H. GORDON, Caveatee, Pl'ff, *v.* ELIZABETH S. OVERBY, LEONORA H. PACE, Kate Culberson, Paul Bleckley, Logan Bleckley, Haralson Bleckley, Caveators, Defendants.	At Law.	No. 39956.

Come here again the parties aforesaid, in manner aforesaid, and the same jury respited yesterday, who, after the case is given them in charge, on their oath say, in answer to the first issue: "1. Was the said deceased at the time of his death a resident of the District of Columbia?" they answer, Yes. In answer to the second issue: "2. Was the said deceased at the time of his death a citizen and resident of the State of Georgia?" they answer, No. In answer to the third issue: "3. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament a resident of the District of Columbia?" they answer, Yes. In answer to the fourth issue: "4. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament a citizen and resident of the State of Georgia?" they answer, No. In answer to the fifth issue: "5. At the time of his death did any considerable part of the personal estate of the said deceased lie within the District of Columbia?" they answer, Yes.

And the court orders said answers certified to that branch of the court whence said issues came.

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing is a true copy of the answers of the jury to the issues in the above-entitled cause.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 1st day of April, A. D. 1898.

[SEAL.]

JOHN R. YOUNG, *Clerk.*

Order. Filed April 22nd, 1898.

In the Supreme Court of the District of Columbia, Holding an Orphans' Court for said District.

In the Matter of HUGH A. HARALSON, Deceased. No. 6967.

Upon consideration of the petition of Fanny H. Gordon, filed January 23, 1896, for the admission to probate and record of the last will and testament of Hugh A. Haralson, deceased, and of the verdict of the jury upon the issues framed upon the caveat of Logan Bleckley, Haralson Bleckley, Paul Bleckley, Kate Culberson, and Le-nora H. Pace, which said caveat was filed March 6, 1896, and which said issues were duly certified by the clerk of this court April 1, 1898, and the said last will and testament having been duly proved by the testimony of the subscribing witness thereto, it is this 22d day of April, 1898, adjudged, ordered, and decreed that the said will be, and the same is hereby, admitted to probate and record as the last will and testament of the personal estate of said decedent; and it further appearing to the court that no executor is named in said will, it is further adjudged, ordered, and decreed that letters of administration *cum testamento annexo* on said estate be, and the same are hereby, granted to Hugh H. Gordon upon his giving a bond in the penalty of five hundred dollars ($500), conditioned for paying all debts, claims, and damages which shall be recovered against him as administrator.

A. B. HAGNER,
Asso. Justice.

9 In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

FANNY H. GORDON, Plaintiff and Caveatee,
vs.
ELIZABETH S. OVERBY, LEONORA H. PACE, Kate Culberson, *et al.* } At Law. # 39956.

In the matter of the estate of Hugh A. Haralson, deceased.

Appeal.

Now comes the above-named caveators and defendants and appeal to the Court of Appeals of the District of Columbia from the order

entered herein on the 22d day of April, 1898, admitting the alleged will of Hugh A. Haralson to probate and record.

PHILLIPS & McKENNEY,
For Caveators.

April 29th, 1898.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

FANNY H. GORDON, Plaintiff and Caveatee, *vs.* ELIZABETH S. OVERBY, LEONORA H. PACE, Kate Culberson, Logan Bleckley, Haralson Bleckley, and Paul Bleckley, Defendants and Caveators.	At Law. # 39956.

In the matter of the estate of Hugh A. Haralson, deceased.

Now comes the above-named plaintiff and caveatee and, being advised of the appeal by the caveators to the Court of Appeals of the District of Columbia from the order entered herein on the 22d day of April, A. D. 1898, admitting the will of Hugh A. Haralson, deceased, to probate, waives service of citation and appeal bond on such appeal.

DAVIS & TUCKER,
Attorneys for Caveators.

Form 41.

In the Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the said special term for orphans' court business, do hereby certify the foregoing to be a true copy of the original will of Hugh A. Haralson, deceased, and the probate thereto, filed and recorded in the office of the register of wills for the District of Columbia aforesaid; also a true copy of petition, filed January 23, 1896; caveat, filed March 6, 1896; issues, filed April 10, 1896; findings of jury, filed April 1st, 1898; order of court, filed April 22, 1898, and appeal and waiver of citation on appeal, filed April 29th, 1898.

And I further certify that the said will, after having been proven by the witness whose name appears in the foregoing probate, was by the order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 22nd day of April, A. D. one thousand eight hundred and ninety-eight.

Seal Supreme Court of the District of Columbia, Probate Jurisdiction.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 3rd day of May, anno Domini 1898.

J. NOTA McGILL.

Supreme Court of the District of Columbia.

SATURDAY, *March* 12, 1898.

Session resumed pursuant to adjournment, Justice Cole presiding.

* * * * * * *

In re Estate of HUGH A. HARALSON. At Law. No. 39956.

Upon hearing the caveators' motion for a new trial, it is considered that the same be, and hereby is, overruled.

In re Estate of HUGH A. HARALSON. At Law. No. 39956.

Now come here again the caveators, by their attorneys, and present to the court here their bill of exceptions taken during the trial of the cause, and pray that the same may be duly signed, sealed, and made part of the record, now for then, which is done accordingly.

In the Supreme Court of the District of Columbia.

FANNY H. GORDON, Caveatee and Plaintiff,
vs.
ELIZABETH S. OVERBY, LEONORA H. PACE, Kate Culberson, Logan Bleckley, Haralson Bleckley, and Paul Bleckley, Caveators and Defendants. } At Law. # 39956.

In the matter of the estate of Hugh A. Haralson. Issues from probate court.

Bill of Exceptions.

Be it remembered that this cause came on to be heard on the 8th day of February, A. D. 1898, before Mr. Justice Cole and a jury, and thereupon, and before the said jury had been empaneled and sworn, counsel for the caveatee, Fanny H. Gordon, moved the court
11 to align the parties to the issues, and thereupon the court, against the protest of counsel for the caveators, assigned the propounder of the will and caveatee, Fanny H. Gordon, the position of plaintiff, and the caveators, Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Logan Bleckley, Haralson Bleckley, and Paul Bleckley, the position of defendants, and at the same time ruled that the said plaintiff should lead in the introduction of proof and should have the right to open and close to the jury; to which assignment and rulings the caveators, by their counsel, then and there excepted, and such exception was noted by the trial justice upon his minutes.

And thereupon, the said jury having been duly empaneled and sworn, the said Fanny H. Gordon, to sustain the issues on her part joined, introduced evidence tending to show that from 1865 to the present time she has been a citizen and resident of De Kalb county, in the State of Georgia, and that both at the date of the testamentary paper in controversy and at the date of his death the said Hugh A. Haralson was a resident of the District of Columbia; and

it having been admitted by counsel for the caveators that at the said last-mentioned date there was on deposit in the National Bank of the Republic and in the Washington Loan & Trust Company, both situate in the District of Columbia, money and securities approximating nine thousand dollars ($9,000.00) in amount and value, and that said money and securities, which constituted the entire estate of the decedent, with the exception of about two hundred dollars ($200.00) found outside of the District of Columbia, were subsequently removed from the said District by Logan Bleckley, Esquire, claiming to act as administrator of the estate of said Hugh A. Haralson, deceased, under grant of letters issued by the Georgia court, the plaintiff rested.

And thereupon the defendants (caveators), to sustain the issues upon their part joined, offered in evidence the following certified transcript of record from the De Kalb court of ordinary, De Kalb county, in the State of Georgia:

STATE OF GEORGIA,
De Kalb County.

The petition of Logan Bleckley, a citizen of the United States, residing in said State, showeth that Hugh A. Haralson departed this life on or about the 23 day of August, 1895, a resident of said county, intestate, leaving an estate, undivised, of real and personal property of the probable value of ten thousand dollars, and that under the law it is necessary that said estate should be administered; that petitioner is one of the next of kin and heir-at-law of the said Hugh A. Haralson.

Wherefore petitioner prays an order directing that citation be issued herein and published, as the law requires, and that if no good cause can be shown to the contrary, your petitioner be appointed administrator of the estate of said deceased.

LOGAN BLECKLEY.

12 DE KALB COURT OF ORDINARY,
AT CHAMBERS, *April 6th*, 1896.

Upon reading the foregoing petition, it is ordered that citation therein be issued and published as required by law.

W. M. RAGSDALE, *Ordinary.*

De Kalb Court of Ordinary, May Term, 1896.

The petition of Logan Bleckley for letters of administration on the estate of Hugh A. Haralson, deceased, having been duly filed, and it appearing that citation therein was issued and published according to law, requiring all concerned to appear at this term and show cause, if any they could, why said letters should not be granted; and it also appearing that said deceased died a resident of said county, intestate, and that said applicant is a citizen of this State and lawfully qualified for said administration, and no objection being offered thereto, it is therefore ordered by the court that the said Logan Bleckley be, and he is hereby, appointed adminis-

trator on the estate of said deceased, and that letters issue to him as such, upon his giving bond, with approved security, in the sum of twenty thousand dollars, and taking and subscribing the oath as provided by law.

W. M. RAGSDALE, *Ordinary.*

GEORGIA, }
De Kalb County. }

I, Logan Bleckley, do solemnly swear that Hugh A. Haralson died intestate, so far as I know or believe, and that I will well and truly administer on all of the estate of the said deceased and disburse the same as the law requires, and discharge to the best of my ability all my duties as administrator on the estate of said deceased, so help me God.

LOGAN BLECKLEY.

Sworn to and subscribed before me 4th day of May, 1896.

W. M. RAGSDALE, *Ordinary.*

GEORGIA, }
De Kalb County. }

To W. M. Ragsdale, ordinary of said county:

We, the undersigned, relatives of Hugh A. Haralson, deceased, being of full age and having an interest in said estate as distributees thereof, hereby select Logan Bleckley as our choice to administer upon the estate of said Hugh A. Haralson, deceased, this 1st day of May, 1896.

KATHERINE BLECKLEY CULBERSON.
PAUL BLECKLEY.

COVINGTON, GA., *May 4th*, 1896.

To the ordinary of De Kalb county:

I am a sister of Hugh A. Haralson, deceased, late of said county, and request the appointment of Logan Bleckley, of Fulton
13 county, Georgia, as administrator of the estate of said Hugh A. Haralson, deceased.

MRS. LEONORA H. PACE.

GEORGIA, }
De Kalb County. }

Know all men by these presents that we, Logan Bleckley, as principal, and H. L. Culberson, J. M. Pace, and Paul Bleckley, as securities, are held and firmly bound and obliged unto the honorable the ordinary of said county for the time being, and his successors in office, in the sum of twenty thousand dollars, to be paid to the said ordinary, his successors in office or assigns; for which payment, well and truly to be made and done, we bind ourselves, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated at Decatur, Ga., the 4th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

The condition of the above obligation is such that if the above-bound Logan Bleckley, administrator of the goods, chattels, and credits of Hugh A. Haralson, deceased, do make a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which have or shall come to the hands, possession, or knowledge of the said Logan Bleckley or in the hands or possession of any other person or persons for him, and the same so made to exhibit in the court of ordinary of said county when he shall be thereunto required, and such goods, chattels, and credits do well and truly administer according to law, and make a just and true account of his actings and doings therein when required by the superior court or the ordinary for said county, and all the rest of the goods, chattels, and credits which shall be found remaining upon the account of the said administration, the same being first allowed by the said court, shall deliver and pay to such persons respectively as are entitled to the same by law; and if it shall hereafter appear that any last will and testament was made by the said deceased and the same be proved before the court and the executors obtain a certificate of the probate thereof, and the said Logan Bleckley do in such case, if required, render and deliver up the said letters of administration, then this obligation to be void; else to remain in full force.

LOGAN BLECKLEY. [L. S.]
H. L. CULBERSON. [L. S.]
J. M. PACE. [L. S.]
PAUL BLECKLEY. [L. S.]

Signed, sealed, and delivered in presence of—
W. M. RAGSDALE, *Ordinary.*

Approved:
W. M. RAGSDALE, *Ordinary.*

14 STATE OF GEORGIA, *De Kalb County.*

Court of Ordinary of said County.

I, W. M. Ragsdale, clerk of the court of ordinary of said county and State, the same being a court of record, hereby certify that the foregoing four pages of partly written and partly printed paper contain a full and exact copy of the original record of said case of file in the office of said court of ordinary.

Witness my official signature and the seal of said court this 6th day of December, 1897.

W. M. RAGSDALE,
Clerk Court of Ordinary.

STATE OF GEORGIA, *De Kalb County.*

Court of Ordinary of said County.

I, W. M. Ragsdale, ordinary of said county and State and presiding judge of the court thereof, the same being a court of record,

hereby certify that the clerk whose name appears to the foregoing certificate is the clerk of said court, and that the foregoing certificate and attestation is in due form.

Witness my official signature and the seal of said court this 6th day of December, 1897.

[SEAL.] W. M. RAGSDALE, *Ordinary.*

as tending to show that the said Hugh A. Haralson had died a resident of said county, intestate, and that the said caveatee was thereby estopped to deny that fact; but the trial justice refused to admit said record in evidence; to which ruling counsel for the caveators then and there excepted, and the exception was noted by the trial justice on his minutes.

And thereupon the caveators, defendants, rested. And because the matters and things aforesaid, as well as the rulings of the trial justice and the exceptions of the respective counsel thereto, would not otherwise appear of record, this bill of exceptions is settled and signed this 12 day of March, A. D. 1898.

CHAS. C. COLE,
Asso. Justice.

Settled by consent March 12, 1898.

PHILLIPS & McKENNEY,
Attorneys for Caveators.
DAVIS & TUCKER,
Attorneys for Caveatee.

15 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } *ss:*
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 28, exclusive, are true copies of originals in cause No. 39956, at law, in the matter of the last will and testament of Hugh A. Haralson, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 10th day of May, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 809. Elizabeth S. Overby *et al.*, appellants, *vs.* Fannie H. Gordon. Court of Appeals, District of Columbia. Filed May 11, 1898. Robert Willett, clerk.

16 TUESDAY, *October 4th, A. D.* 1898.

ELIZABETH S. OVERBY, LEONORA H. PACE, KATE CULberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, Appellants,
vs.
FANNIE H. GORDON. } No. 809.

The argument in the above-entitled cause was commenced by Mr. S. F. Phillips, attorney for the appellants, and was continued by Messrs. C. C. Tucker and Henry E. Davis, attorneys for the appellee, and was concluded by Mr. F. D. McKenney, attorney for the appellants.

17 ELIZABETH S. OVERBY, LEONORA H. PACE, KATE Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, Appellants,
vs.
FANNIE H. GORDON. } No. 809.

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

This is an appeal from an order of the supreme court of the District of Columbia, holding a special term of that court for orphans' court business, whereby a certain paper-writing was therein admitted to probate as the last will and testament of one Hugh A. Haralson, deceased, and letters of administration with the will annexed, there having been no executor named therein, were ordered to be issued to Hugh H. Gordon.

It appears from the record that Hugh A. Haralson, a citizen of the State of Georgia, but claimed by the appellee to have been at the time of his death a resident of the District of Columbia, died on August 23, 1895, at Kirkwood, De Kalb county, in the State of Georgia, where he was staying temporarily as an official in
18 the service of the United States; and that on August 14, 1895, nine days before his death, he had executed an instrument of writing purporting to be his last will and testament, by the terms of which he bequeathed to his sister, Mrs. Fannie H. Gordon, the appellee in this case, for life, and after her death to her daughter, Carrie Lewis Gordon, his niece, the interest on his bonds, which are not otherwise described or identified in the writing, with remainder over to his heirs-at-law in the event that Carrie Lewis Gordon should have no children at her death. This paper-writing was attested by only one witness; while it appears that to make a testamentary paper effective as a will either of real or personal property in the State of Georgia two attesting witnesses are required, although in the District of Columbia, as the law now stands, it is not required that any witness should attach his signature to the paper to give it validity as a disposition of personal property. And it is this difference in the laws of the State of Georgia and of the District of Columbia that has given rise to the present controversy. The appellants claim that Hugh A. Haralson, the deceased, was at

the time of his death a resident of the State of Georgia, and that he died intestate; and on the other hand the appellee contends that the deceased, at the time of his death, although a citizen of Georgia, was a resident of the District of Columbia, and that the will was valid here.

The bonds referred to in the paper, which were of the value of about $9,000, were, at the time of Haralson's death, on deposit with two banking institutions in this city of Washington; and they constituted almost the whole estate left by the deceased, the residue of the estate amounting only to about $200. Where this residue was situated, or whether it was realty or personalty, does not appear. Only the fact appears that it was situated outside of the District of Columbia.

The will was filed in the office of the register of wills for this District; and on January 23, 1896, Mrs. Fannie H. Gordon, the legatee for life named in it, filed her petition in the supreme court of the District, holding a special term for orphans' court business, praying for its admission to probate, and the granting of letters of administration therewith to her son, Hugh H. Gordon, a resident of this District. Upon this petition a citation was issued to the next of kin to appear and show cause, if any they had, why the prayer of the petition should not be granted; and in pursuance of this citation, the appellants, who, with the appellee, constitute the next of kin of the deceased, appeared and filed a caveat to the alleged will, and averred that the paper-writing in question was not the last will and testament of the deceased, and that at the time of his death Hugh A. Haralson was a resident of the State of Georgia, and not of the District of Columbia, and that therefore the alleged will was of no validity in law.

Issues were thereupon framed between the parties; and on April 10, 1896, an order was made transmitting these issues to the circuit court branch of the supreme court of the District, for trial by jury according to law. The issues were five in number, and were as follows:

"1. Was the said deceased at the time of his death a resident of the District of Columbia?

"2. Was the said deceased at the time of his death a citizen and resident of the State of Georgia?

"3. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament, a resident of the District of Columbia?

"4. Was the said deceased at the time of the making of the paper-writing purporting to be his last will and testament, a citizen and resident of the State of Georgia?

"5. At the time of his death did any considerable part of the personal estate of the said deceased lie within the District of Columbia?"

After an unexplained delay of nearly two years, trial of these issues was had; and on February 10, 1898, the jury rendered its verdict, wherein the first, third and fifth issues were answered in the affirmative, and the second and fourth in the negative; that is,

the jury found that the deceased, Hugh A. Haralson, both at the time of the making of the alleged will and at the time of his death, was a resident of the District of Columbia and not of the State of Georgia; and that at the time of his death there was a considerable part of his personal estate lying within the District of Columbia.

The findings of the jury upon the issues were duly certified to the special term of the court; and that court then directed proof to be taken of the execution of the will. This was done by the taking of the deposition of the subscribing witness. Upon the return of this deposition, the court rendered an order admitting the paper-writing to probate and record as the last will and testament of Hugh A. Haralson, and directing the issue to Hugh H. Gordon, of letters of administration upon his estate with the will annexed; and from this order the caveators have appealed, in pursuance of exceptions taken by them to rulings of the trial court at the trial of the issues before the jury.

There were two of these exceptions. The first of them was to the ruling of the court upon the alignment, as it is called, of the parties at the trial, the position of plaintiff, with the right to open and close the case, having been assigned to the caveatee, and the position of defendants to the caveators. Upon this ruling the first assignment of error by the appellants is based.

A second assignment of error, and that principally relied upon by the appellants, is founded upon a ruling of the trial court whereby certain record testimony offered in evidence by the caveators was excluded from consideration by the jury. This excluded testimony consisted of the record of certain proceedings had in the court of the ordinary, which is the court of probate, of De Kalb county, in the State of Georgia, in the months of April and May, 1896.

It appeared that, on April 6, 1896, one month after the appellants had filed their caveat in this District, and four days only before the order was made for the transmission of the issues joined between the parties to be tried before the jury, Logan Bleckley, one of the caveators, and one of the appellants here, had filed a petition in the court of the ordinary in De Kalb county, in the State of Georgia, wherein he had stated that Hugh A. Haralson had died in that county on August 23, 1895, a resident of the county and in-

19 testate, leaving an estate of real and personal property of the probable value of about $10,000, and asked that he, as one of the next of kin, should be appointed administrator of the estate. No mention was made of the alleged will, or of the proceedings pending in the District of Columbia, or of the controversy between the parties as to the place of residence of the deceased and the validity of the will, or of the *situs* or character of the property; nor was it mentioned who were the next of kin. Upon the petition the ordinary ordered a citation to issue "according to law;" but what publication of it was made we are not advised by the record. We understand, however, from the statements of counsel in their arguments, that the citation was published in some newspaper of limited circulation; and it seems to be conceded that the appellee in this

case had no notice or knowledge whatever of it or of any of the proceedings in the court of the ordinary; and all the proceedings evidently were *ex parte* proceedings. Thereupon, and on or before May 4, 1896, and within one month after the filing of the petition, the ordinary made an order, reciting the filing of the petition, and the issue and publication thereof according to law, and also that it appeared that the deceased had died a resident of the county and intestate, and that the applicant was duly qualified for the administration of his estate; and thereupon directing that letters of administration be issued to him, no objection having been offered thereto.

At the trial of the issues in the supreme court of this District, after the appellee as plaintiff had adduced her *prima facie* proof in support of her side of the issues, and had also proved that, subsequently to the date of his appointment as administrator in Georgia, the appellant, Logan Bleckley, under his claim as such administrator, had removed the bonds left by the deceased from this District, the appellants, to sustain their side of the issues, offered in evidence the record, duly authenticated, of the proceedings had in the court of the ordinary in Georgia, as we have here stated them; and they neither adduced nor offered to adduce any other testimony. This record was offered in evidence "as tending to show that the said Hugh A. Haralson had died a resident of said county (of De Kalb) intestate, and that said caveatee was thereby estopped to deny that fact." But the trial court refused to admit it; and the caveators excepted. And this is the basis for the second assignment of error.

1. With reference to the first assignment of error founded upon the ruling of the trial court in the arrangement of the parties, as plaintiff and defendants, respectively, it appears that there are cases in Maryland and elsewhere, in which the ruling of a trial court in the arrangement or alignment of parties as plaintiffs and defendants, in respect of issues sent from a probate court, has been made the subject of exception, and has been assigned as error and reviewed in an appellate tribunal; but that matter has been settled for us by repeated decisions of the Supreme Court of the United States, which have held that the ruling of a trial court on the question as to who should open and close a case is merely upon a matter of practice not proper to be made the subject of exception or to be reviewed upon writ of error. Lancaster *v.* Collins, 115 U. S., 222; Hall *v.* Weare, 92 U. S., 728; Day *v.* Woodworth, 13 How., 363, 370.

But even if the question were an open one, and we were not governed by these controlling authorities, we would have to hold that the contention of the appellants in this regard is untenable. The issues before the jury, while their determination would ultimately have affected the question of the validity or invalidity of the will of Hugh A. Haralson, were addressed merely to the determination of certain preliminary questions; and neither the validity of the will nor its execution was in issue. In fact, the will itself did not figure in any manner in the proceedings before the jury. The questions propounded to the jury in the issues were really only two; whether

Haralson at the time of his death was a resident of the District of Columbia, and whether at the time of his death, any considerable part of his personal estate lay within this District. The issues respecting his residence in the State of Georgia merely presented the negative of the other propositions, and might, in fact, have been entirely eliminated. Now, upon the main issues, it is too clear for any reasonable doubt that the burden of proving the affirmative was upon the appellee; and, therefore, it necessarily follows that she had the right to be made plaintiff and to open and close the case. There was no error in the ruling of the trial court in that regard.

2. But it is upon the second assignment of error that the appellants principally rely. And here they argue with great learning, force and ingenuity, that, by the refusal of the trial court to admit in evidence the record from the court of the ordinary in Georgia, they have been denied a right guaranteed to them by the Constitution of the United States in the provision that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." The contention demands our most serious consideration.

The record of the Georgia court, it may be recalled, was offered as an estoppel upon the appellee to conclude her from denying that the deceased Haralson was a resident of the State of Georgia at the time of his death and that he had died intestate. Now, if that record operated as an estoppel, there was nothing for the trial court to do, but to direct the jury to return a verdict in favor of the caveators on the issues, and nothing for the jury to do but to return such a verdict. The estoppel would have been conclusive of the whole controversy. And such in fact must have been the result, if the record is admissible at all In the case of The Southern Pacific Railroad Co. *v.* United States, 168 U. S., 1, the Supreme Court of the United States, after much consideration of all the authorities, by Mr. Justice Harlan said:

"There are some cases holding that a judgment, without being specially pleaded, is not conclusive upon the issues to which it relates, but is only persuasive evidence, and that the court is at liberty to find according to the truth as shown by all the evidence before it. But according to the weight of authority and upon principle, the former judgment, if admissible in evidence at all, is conclusive of the matters put in issue and actually determined by it.

20 Mr. Greenleaf says correctly that 'the weight of authority, at least in the United States, is believed to be in favor of the position that where a former recovery is given in evidence, it is equally conclusive in its effect as if it were specially pleaded by way of estoppel.' 1 Greenleaf on Evidence, sec. 531. This view is in accord with the decisions of this court above cited."

The converse of the proposition is also undoubtedly true, namely, that unless a previous judgment is conclusive as an estoppel, it is not admissible at all in evidence. For unless conclusive, it is no more than hearsay testimony. This position we do not understand the appellants to controvert. We understand that they rely upon

the decree of the court of the ordinary in Georgia as a conclusive estoppel against the proceedings in this jurisdiction. The question then is, whether that decree does operate as such an estoppel.

At the threshold of our inquiry, it seems rather shocking to the judicial mind that the jurisdiction of a court once acquired should be divested out of it by extraneous proceedings in a foreign jurisdiction; or rather, that it should be told that it may not inquire even into its own jurisdiction, because another court, in another State, has, in an *ex parte* proceeding, made some finding of fact which would be inconsistent with the exercise of jurisdiction; and this, too, when it is conceded that there is property within the jurisdiction of the court which the law gives it the right and makes it its duty to administer. We cannot think that there is any interstate or international comity, or any constitutional provision that would sanction such an anomaly in the administration of justice.

That nearly all the personal property of the deceased at the time of his death was situated in the District of Columbia, no one controverts, and the jury so found. By virtue of that fact, and by virtue of the filing of the appellee's petition for administration upon the estate, that property was brought under the control and jurisdiction of the supreme court of the District, whether the deceased was a resident of the District of Columbia, or of the State of Georgia, and whether he died testate or intestate. It is the express provision of our statute law, that "whenever any person hath died intestate, leaving in this State (District) goods, chattels, or personal estate, letters of administration may forthwith be granted by the orphans' court of the county wherein was the party's mansion-house or residence; or in case he or she had no mansion or residence within the State, letters shall be granted in the county where the party died; and in case the party neither had mansion or residence, nor died within the State, letters may be granted in the county wherein lies, or is supposed to lie, a considerable part of the party's personal estate." Act of Maryland of 1798, ch. 101, subch. 5, sec. 2.

So that in this case the supreme court of the District of Columbia, exercising the powers of an orphans' court, whatever may have been the fact in regard to the residence of the deceased, had the undoubted jurisdiction to grant letters of administration upon the estate in this District. And we cannot for a moment assume that that jurisdiction can be ousted by the removal of the assets afterwards from this District under supposed authority from a foreign jurisdiction. The complications that may arise from such removal cannot enter into our present consideration. The fact remains, and it is the only thing which we can consider in this connection, that, at the time of Haralson's death, and at the time of the application for letters of administration in this District, nearly all the personal property of the deceased was here, and was taken under the control of the supreme court of the District, for the purpose of administration. The extent and character of that administration, it is true, remained to be determined. Had Haralson died intestate or testate? Was he a resident or non-resident of the District of Columbia at the time of his death? Were the letters to be granted letters

testamentary or letters of administration? Was there a will or was there not? There was to be administration in any event, and the property was under the control of the court for the purpose of administration. All the parties in interest came into the court, and instituted proceedings for the determination of the unsolved questions. Issues on those questions were formulated between them; and a trial of those issues was to be had according to law. Was it competent for one of the parties at this juncture to go into another jurisdiction, and there, without notice to the opposing party, and without any knowledge on her part of the proceeding, without trial, without examination, without inquiry, without any knowledge of existing conditions communicated to the court to which the application was made, to assume as true what he knew to be contested, to allege it as truth when he knew it to be denied, to file a petition in the court of an ordinary in the State alleging as a fact that which he knew was then matter of judicial inquiry in the District of Columbia, to conceal from the ordinary, or at least to fail to disclose to him, what we think should have been disclosed to him, under the circumstances, the facts of the existing controversy, and thereupon to procure from him an order in this *ex parte* and practically secret proceeding, which he now proposes to use to prevent judicial inquiry and to estop judicial proceedings in the District of Columbia? If the law sanctions a proceeding like this, then undoubtedly the law should be changed as soon as possible.

There is no necessity to assume that the action of the appellant, Logan Bleckley, in the premises was not taken by him in good faith, and that it is not susceptible of a reasonable explanation. Bad faith is not charged on either side; and we may well assume that there was here no improper purpose on the part of any one, and no intention to procure an undue advantage. But the effect of the course pursued is to affect injuriously the administration of justice in the District of Columbia, and to deprive the appellee of her just rights; and we cannot think that it can be defended upon any ground of constitutional right. The action of the appellant, although taken in good faith and without any fraudulent intent, must be characterized as a fraud in law; and judgments and decrees procured by fraud, whether the fraud be one of law or one of fact, are not of the class of "records and judicial proceedings" that is declared by our Federal Constitution to be entitled to full
21 faith and credit extraterritorially. It is a maxim of the law that fraud vitiates everything; and it will vitiate "records and judicial proceedings" as it may anything else, and render them null and void.

The proceeding in this case in the supreme court of the District of Columbia was a proceeding both *in rem* and *inter partes*. The court had jurisdiction and control of the subject-matter; and by operation of law the *res* was either actually or constructively within its custody. Then all the parties in interest came in to litigate the matters in issue between them. Now, it has been repeatedly decided by the Supreme Court of the United States, that, when proceedings *in rem* have been commenced in a court of competent jurisdiction,

and the court has acquired possession, actual or constructive, of the *res*, and analogous proceedings are subsequently instituted in another court of competent jurisdiction involving the same property, exclusive jurisdiction for the purpose of its own suit is acquired by the court which has first taken possession of the *res;* and the proceedings of the second court, with reference to those of the first, are to be treated as null and void—not necessarily null and void for all purposes, but only with reference to the rights acquired in and under the suit first instituted. Heidritter *v.* Elizabeth Oil Cloth Co., 112 U. S., 294; Covel *v.* Heyman, 111 U. S., 176; Porter *v.* Sabin, 149 U. S., 473; Rio Grande R. R. Co. *v.* Gomila, 132 U. S., 478; *In re* Chetwood, 165 U. S., 443; *In re* Johnson, 167 U. S., 120; Ableman *v.* Booth, 21 How., 506. As stated in several of these cases, the observance of this rule or principle of law is rendered necessary to prevent clashing or collision between courts of equal or concurrent jurisdiction, and to preserve the due and orderly administration of justice.

The action of the court that acquires the later jurisdiction, as we have said, is not to be regarded as null and void for all purposes. Undoubtedly the adjudication of the Georgia court in the present instance is good within the State of Georgia, and may be the foundation even of extraterritorial rights beyond the territorial limits of that State; but against the proceedings upon the same subject-matter in the District of Columbia it can be allowed no validity by the courts of this District. The case is very different, of course, where merely personal rights between parties are adjudicated, as in ordinary actions upon contracts and torts. There only one adjudication is required upon the merits, and only to such adjudication are parties entitled. Cases of this kind stand upon a very different basis from proceedings *in rem;* and especially do they stand upon a different basis from proceedings for the administration of decedents' estates. These last are in their nature local, and have, in general, no extraterritorial force, or at most only a very limited one. Aspden *v.* Nixon, 4 How., 467; Johnson *v.* Powers, 139 U. S., 156. They can give no authority to any one beyond the territorial jurisdiction of the courts in which they are had; and they can scarcely be held to conclude anything for other jurisdictions. To call such a proceeding one *inter partes* would be absurd; to give it the force and effect of a proceeding *inter partes* would be to open the door for the grossest fraud and to overthrow all the safeguards of the law.

Moreover, there was question of jurisdiction involved here. The supreme court of the District of Columbia, beyond all question, had jurisdiction of the property which was situated here; but there was question whether it had the jurisdiction to admit to probate a certain testamentary paper-writing on file in the office of the register of wills for this District. That jurisdiction depended on the matter of the residence of the deceased at the time of his death. The place of residence, therefore, was a jurisdictional fact to be ascertained by the court. Can it be that a court of limited scope and power, like that of the ordinary in Georgia, proceeding summarily and *ex parte* and outside of the course of the common law, will be

permitted to determine that jurisdictional fact finally and conclusively for our courts, and practically nullify the right of trial by jury given in our courts in such cases by statute? It is an invariable and universal feature of our judicial institutions that every court must be the judge of its own jurisdiction in the first instance, and cannot be concluded by what any other tribunal, except of course an appellate tribunal, has said or done in the matter. It would be a singular anomaly in the law if the court of the ordinary in Georgia could, by an *ex parte* order, determine the extent of the jurisdiction of the supreme court of the District of Columbia; as it would equally be an anomaly if the supreme court of the District of Columbia attempted to determine and limit the jurisdiction of the ordinary in Georgia. We are satisfied that neither tribunal would attempt consciously thus to trespass upon the prerogatives of the other. And we are satisfied that, if in the present instance the court in Georgia had had its attention called to the proceedings pending in the supreme court of the District of Columbia, which was not done, it would certainly have stayed its hand, and would not have granted administration even to the extent to which it might properly have granted it—for property in the State of Georgia—until a determination was had of the issues pending in the District of Columbia.

The cases of The Southern Pacific Railway Company *v.* United States, 168 U. S., 1; and Railroad Company *v.* Gorman, 7 App. D. C., 91, are cited by the appellants in support of their contention; but we fail to see that these cases have that effect. To the first of these cases we have already referred in this opinion upon another point. There it was held, that "a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first case remains unmodified." But evidently this rule, made, as the learned justice who spoke for the supreme court in that case said in the opinion, for the peace and repose of society, applies to matters
22 distinctly put in issue between parties; and it can therefore have no application to *ex parte* proceedings, to judgments entered under statutory proceedings upon notice merely by publication and without personal service of process or some equivalent of it, or to proceedings for administrations upon the estates of deceased persons; nor can it give validity to judgments procured by fraud.

In the case of Railroad Company *v.* Gorman, 7 App. D. C., 91, we held that the grant of letters of administration in North Carolina could not be made the subject of collateral attack in a suit instituted by another administrator in this District, and that a certain finality was to be accorded to the action of the probate court of the foreign State. But a reference to the facts of that case will show that it can have no application to the case now under consideration. There, it is

true, as in the present case, there was controversy as to the place of residence of the deceased person at the time of his death, which death was the result of negligence on the part of a railroad company in North Carolina, the death having happened in that State, and the deceased having been at least temporarily domiciled there.

The only asset of the estate would seem to have been a claim for damages against the railroad company under the statute of North Carolina. Letters of administration were asked for and granted in the State of North Carolina; and similar letters were asked for and granted to another person in the District of Columbia, where it was also claimed the deceased, at the time of his death, had his residence. Suit was instituted in North Carolina by the administrator appointed in that State against the railroad company, and a recovery was had or a settlement was effected in pursuance of the suit. A similar suit was instituted in this District, where the railroad company had an office and an agent, by the administrator appointed here; and at the trial of this latter suit the proceedings and recovery in North Carolina were either introduced in evidence or pleaded as an estoppel. It was sought to attack them by a showing that the deceased was a resident of the District of Columbia, and that therefore the probate court in North Carolina was without authority to appoint an administrator in that State. And we held that this could not properly be done. Plainly that case differs from the present. The court of North Carolina had the undoubted right to grant administration; for the assets were there, the railroad company was there, and the act of negligence happened there. To the railroad company the administrator of the estate appointed in North Carolina was, both in fact and in law, the representative of the estate, and a settlement with him was a discharge by the estate. Assuredly it should not be called upon to pay again in any and every State where it should happen to be suable in consequence of doing business there, and where an administrator should happen to have been appointed. The first recovery must be the only recovery; and it would operate as a fraud if each and every administrator in such suits could go back to question the validity of the appointment in North Carolina.

The question in the case now before us is not one of collateral attack on the validity of the appointment of an administrator in another State. It may be conceded that the proceedings in the court of the ordinary in Georgia are valid for all the purposes which they may legitimately subserve in that State. But we do not think that they can be introduced here to determine the jurisdiction of our own courts, and least of all to divest a jurisdiction already acquired and asserted. And we think the action of the trial court in this case in excluding them from consideration was entirely right and proper.

These views seem to us to be abundantly supported by the authorities. Johnson *v.* Powers, 139 U. S., 156; Aspden *v.* Nixon, 4 How., 467; Stacy *v.* Thrasher, 6 How., 44; Low *v.* Bartlett, 8 Allen, 259; Lindley *v.* O'Reilly, 50 N. J. L., 636.

In our opinion, it follows from what we have said that the order or decree appealed from should be *affirmed, with costs. And it is so ordered.*

Mr. Chief Justice ALVEY dissenting:

I feel constrained to dissent from the opinion of the majority of the court in this case; and though I regret my inability to agree with my brothers, I shall state briefly the grounds of my dissenting opinion.

The appeal is from an order of the supreme court of this District holding a special term for orphans' court business. The order is dated the 22d of April, 1898; and by that order a paper, declared to be the last will and testament of Hugh A. Haralson, deceased, is admitted to probate and record; and because there was no executor named in said paper, letters of administration *cum testamento annexo*, upon the estate of the deceased, were, by said order, granted to Hugh H. Gordon.

The facts of the case, in the order in which they occurred, are important to be borne in mind.

The deceased, Hugh A. Haralson, died in De Kalb county, in the State of Georgia, August 23, 1895. On the 14th of the same month and year, at Savannah, in the State of Georgia, the deceased executed a paper-writing purporting to be his last will and testament; but which paper was signed by the deceased in the presence of but one witness, when, by the law of Georgia, to make a will or testament valid as to personal estate, the attestation of two witnesses were required. By this paper, thus executed, the decedent attempted to dispose of certain bonds of the value of about $9,000. The legatees, to whom these bonds are given by this paper, are his sister, Mrs. Fanny H. Gordon, and his niece, Carrie L. Gordon. These bonds, at the time of the death of Haralson, were on deposit in a bank in the city of Washington, District of Columbia. The paper-writing purporting to be a last will and testament of the deceased having but one witness to its execution, was and is wholly invalid as a testamentary disposition of personal property, by the law of the State of Georgia. But, if the party executing the paper really had his domicil in this District of Columbia, at the time of his death, the paper would be valid and entitled to admission to probate here.

Upon the supposition that the deceased had his domicil
23 here, or was a resident of this District at the time of his death, Mrs. Gordon, the legatee in the supposed will, on the 23d of January, 1896, filed her petition in the supreme court of this District, holding a special term for orphans' court business, praying for the admission to probate and record of the alleged testamentary paper, and for the granting of letters of administration, *cum testamento annexo*, upon the personal estate of the deceased. By this petition, it is alleged, that the deceased, *though a citizen* of the State of Georgia, was, at the time of his death, and for several years prior thereto had been, *a resident* of the District of Columbia, and that he died in the State of Georgia, where he was temporarily engaged in the discharge of his duties as an official of the Government of the United States. It is alleged in that petition that the deceased, at the time of his death, was possessed of personal estate, consisting

chiefly of bonds and stocks, of the value of about $10,000, all of which, except an insignficant part thereof, was then in the District of Columbia. The petition also names the parties who were the next of kin, and distributees of the personal estate of the deceased, and all of whom were non-residents of this District, and citations were prayed to such parties.

To this notification parties interested appeared, and on the 6th of March, 1896, a caveat to the desired probate of the paper propounded as the last will and testament of the deceased was filed by and on behalf of the next of kin of the deceased, other than Mrs. Gordon; and against the probate of the paper propounded, three grounds were stated: 1st. That the said paper-writing is not the last will and testament of the deceased; 2d. That the deceased was not, at the time of his death, a resident of the District of Columbia; and, 3d. That at the time of his death the deceased was a citizen and resident of the State of Georgia.

Upon this caveat to the probate of the paper, the court, on the 10th of April, 1896, made up five issues to be sent to a court of law to be tried by a jury. These issues were: 1st. Whether the deceased was, *at the time of his death*, a resident of the District of Columbia? 2d. Whether the deceased was, *at the time of his death*, a citizen and resident of the State of Georgia? 3d. Whether the deceased was, *at the time of the making of the paper-writing*, propounded as his last will and testament, *a resident of the District of Columbia?* 4th. Whether the deceased was, *at the time of the making of said paper-writing, a citizen and resident of the State of Georgia?* And 5th. Whether, *at the time of his death*, did any considerable part of the personal estate of the deceased exist or lie within the District of Columbia? Some of these issues, especially the third and fourth, were not material to the question of fact upon which the validity of the paper propounded depended, because not determinate of the real question involved.

The issues thus framed were sent to the court of law to be tried, but the trial did not take place until February, 1898. The verdict of the jury was, upon the evidence submitted to them, that the deceased was, at the time of his death, a resident of the District of Columbia, and that he was not, at that time, a citizen and resident of the State of Georgia; that the deceased, at the time of making the paper propounded as his will, was a resident of the District of Columbia, and was not, at that time, a citizen and resident of the State of Georgia; and that, at the death of the deceased, a considerable portion of his personal estate was in the District of Columbia.

This verdict was certified to the special term for orphans' court business, and was made the basis of the order of the 22d of April, 1898, from which this appeal is taken.

The record shows that on the 6th of April, 1896, just one month after the caveat filed, there was filed by Logan Bleckley, one of the next of kin of the deceased, and one of those who had filed the caveat to the probate of the paper propounded in the court in this District, a petition in the court of ordinary of De Kalb county, in the State of Georgia, asking for citation of the parties interested,

and for letters of administration upon the personal estate of the deceased. Upon this application, at the May term of that court, 1896, an order was passed by the ordinary, reciting the facts of the application, and that citation had been published, according to law, requiring all concerned to appear and show cause, if any they could, why letters should not be granted; and, as it is declared, it appearing "that the deceased died *a resident* of said county, *intestate*, and that said applicant is a citizen of this State, lawfully qualified for said administration, and no objection appearing to the contrary," it was thereupon ordered, that said Logan Bleckley be appointed administrator, etc. And letters were accordingly granted.

The trial of the issues framed on the caveat did not take place until March, 1898, nearly two years after the grant of letters of administration in the State of Georgia, and more than two years after the paper had been propounded for probate. On the trial of the issues the caveatee was given the position of plaintiff on the record, and this manifestly was correct, as the onus of proof was upon her. She was required to offer affirmative proof in support of the first, third, and fifth issues; and as to the second and fourth issues, the onus of proof was upon the caveators. And proceeding according to this order of proof, the caveatee offered evidence to show, according to the bill of exception, that the deceased, both at the date of the alleged testamentary paper, and at the time of his death, was a resident of the District of Columbia. And in support of the fifth issue, it was admitted that at the time of the death of the decedent, he had on deposit in a bank, and in a loan and trust company, in this District, money and securities amounting to about $9,000, and that said money and securities *constituted the entire estate of the decedent*, with the exception of about $200 found outside of the District of Columbia. It was further admitted that the money and securities so on deposit in this District, were subsequently removed from the said District by Logan Bleckley, claiming to act as administrator of the estate of the deceased, under and by virtue of letters of administration issued to him by the court of ordinary in the State of Georgia. Upon this proof the caveatee rested her case.

24 The caveators thereupon produced and offered in evidence, to sustain the issues on their part, a duly certified transcript of the record of De Kalb county court of ordinary, in the State of Georgia. This transcript was offered as tending to show that the deceased had died *a resident* of the said county of De Kalb, *intestate*, and that the caveatee was thereby estopped to deny those facts. But the court below rejected the record *in toto*, and would not admit it for any purpose, and the caveators excepted. The only question, therefore, presented on this appeal is as to the admissibility of that record of the proceedings of the court of ordinary in the State of Georgia.

The question is an important and a delicate one, and involves many and serious consequences; and to determine the question thus presented, we must look to and consider the facts involved in the issues on trial, and the nature of the judicial proceeding offered in evidence. It may be that the effect attributed to the judicial pro-

ceeding in Georgia, in the offer made, was too broad and conclusive, and I think it was so. But while the record may not operate as an estoppel on the question of domicil, it does not follow that it should have been rejected as furnishing no evidence whatever. The great and controlling question under the issues was, where was the real and actual domicil of the deceased at the time of his death? That question was jurisdictional in its nature, and it was the fact involved in the issues upon which the rights of the parties depended. I think the record offered in evidence was admissible as evidence in chief under issues two and four, and as evidence in rebuttal of the evidence offered by the caveatee in support of issues one and three. Treating the question of domicil as in the nature of a jurisdictional question, it would seem to follow that the judicial proceedings in the court of ordinary in the State of Georgia would not preclude inquiry into the jurisdiction of that court, in which the proceedings took place, *over the subject-matter*, or the parties affected thereby, *nor into the facts necessary to give such jurisdiction*, namely, the fact of domicil of the decedent at the time of his death. Simmons *v.* Saul, 138 U. S., 439, 448; Thompson *v.* Whitman, 18 Wall., 457; Cole *v.* Cunningham, 133 U. S., 107.

The record, however, should have been admitted, in connection with the other facts, as reflecting upon *the fact of domicil* of the deceased at the time of his death. For if it be true, as declared by the judicial finding of the Georgia court, that the decedent was, at the time of his death, a resident of or domiciled in the State of Georgia, then he certainly died intestate as to all his personal property, wherever situate. It is conceded that the paper-writing propounded for probate in this jurisdiction, as a testamentary instrument, has no validity whatever by the law of the State of Georgia; and it is also conceded that before the instrument was admitted to probate here and annexed to letters of administration, all the personal property belonging to the estate of the deceased had been removed from this jurisdiction and taken to the State of Georgia by the administrator appointed there; so that there was no property whatever in this jurisdiction upon which the supposed testamentary paper and the letters of administration granted here could operate. And upon the assumption that the domicil of the deceased at the time of his death was in Georgia, the claim to and removal of such bonds, money, or securities, by the Georgia administrator, were in all respects lawful and proper. Act of Congress, February 28, 1887 (24 Stat., 431); Wilkins *v.* Ellet, 9 Wall., 740; Wyman *v.* Halstead, 109 U. S., 654, 656; Parsons *v.* Lyman, 20 N. Y., 103. It is a principle well settled that where there are no debts due from the estate in the jurisdiction where a foreign debtor of the estate resides, and no ancillary administration has been granted there, the principal administrator may, in such foreign State, receive a voluntary payment from the debtor, which will be a good discharge of the debt, *even if an ancillary administration should be afterwards appointed.* Wilkins *v.* Ellet, 9 Wall., 740; Mackey *v.* Coxe, 18 How., 100, 104; Wyman *v.* Halstead, *supra.* Nor did the fact of the pendency of the issues formed on the caveat to the alleged testamentary paper, involving

the question of the residence or domicil of the decedent in this district, or the paper after it had been admitted to probate here, with letters of administration, affect in any manner the right of the foreign administrator, as to acts done and rights attached before probate obtained. He derived his authority from a competent jurisdiction, and that authority he was entitled to have respected by the courts of this jurisdiction, both by express provision of statute, and by the comity of States. The subsequent probate of the paper and the grant of letters of administration here will not have the effect of vacating the letters of administration granted in Georgia, or of divesting the administrator in that State of the funds that he lawfully received and removed from this District; that was a lawful act done by him by virtue of a competent authority derived from the court of ordinary in Georgia. Schluter *v.* Bowery Saving Bank, 117 N. Y., 125. If the deceased was in fact domiciled in the State of Georgia at the time of his death, as he was found and declared to have been by a court of competent jurisdiction in that State, then the probate of the paper in this District was wholly without effect and operation, even as to the bonds and securities mentioned in the paper. For it is now a settled principle in the jurisprudence of this country, as it is in the jurisprudence of England, that the succession to and distribution of personal property is regulated by the law of the owner's domicile, and not by the *lex loci rei sitæ;* and that a will of personal estate must, in order to pass the property, be executed according to the law of the place of the testator's domicil at the time of his death. This principle appears to have been first definitely laid down in this country in the case of Deserbats *v.* Beiqniers, 1 Binney, 336. In that case, a foreign testator, domiciled abroad, had made a will of his personal estate, invalid according to the law of his domicil, but valid according to the law of Pennsylvania; and the question was, whether it was competent and valid to pass personal property situate in Pennsylvania. This question was much considered, but the court held that the
25 paper was not valid and effectual to pass personal property situated in Pennsylvania; and laid down the general doctrine, that a will of personal property must, in order to pass the property, be executed according to the law of the place of the testator's domicil at the time of his death. If void by that law, it is a nullity everywhere, although it is executed with the formalities required by the law of the place where the personal property is locally situate. The court, in that case, assert what has been repeatedly held in subsequent cases, that, in respect to the controlling effect of the domicil, there is no difference between cases of succession by testament, and by intestacy. 1 Sto. Confl. Laws, sec. 468, and cases cited.

In the case of Whicker *v.* Hume, 7 Ho. L. Cas., 124, the questions involved in this case were very fully considered, both at the bar and by the court. In that case the testator had died in Paris, where he had lived for some time, and he made his will there, but he made it in English form, and it was admitted to probate in England. One of the questions much considered was, at what place

the testator really had his domicil at the time of his death—whether in France, in Scotland, or in England, as he had lived in all three countries. It was concluded upon the facts, that he was domiciled in England at the time of his death. And the general doctrine was laid down and maintained, that a will to be valid must be executed according to the law of the country where the testator was domiciled at the time of his death; and that while the grant of probate, not vacated on appeal, conclusively establishes that the will was so executed, yet it does not conclude on the question of domicil. In that case there were several opinions delivered, and the law lords all concurred in maintaining the general principle, that the maxim, *mobilia sequuntur personam*, is part of the *jus gentium*, and, therefore, that the post-mortuary distribution of the effects of a deceased person must be made according to the law of his domicil at the time of his death; and, consequently, if the law of the country allowed the deceased to make a will, that will must be made as that law requires.

The Lord Chancellor (Chelmsford), after stating some of the general features of the case, said: "I apprehend, that this will having been admitted to probate, it must be taken to be a valid will wherever it shall turn out that the testator was residing at the time of his death, but that the place of domicil is still open for consideration, and also the validity of the bequest contained in the will, and the effect of it according to the law of the domicil of the testator. The question, therefore, being open for consideration as to where the testator was domiciled at the time of his death, it will be necessary to enter shortly into the consideration of the evidence upon that subject."

Lord Cranworth, in his opinion, said: "The first question made is one that was extremely important, namely, the point, whether probate was or was not conclusive evidence of the domicil. Now, I have no hesitation in saying, that the affirmative of that proposition cannot be a correct exposition of the law. A probate is conclusive evidence that the instrument proved was testamentary according to the law of this country. But it proves nothing else. That may be illustrated in this way. Suppose there was a country in which the form of a will was exactly similar to that in this country, but in which no person could give away more than half his property. Such an instrument made in that country by a person there domiciled, when brought to probate here, would be admitted to probate as a matter of course. Probate would be conclusive that it was testamentary, but it would be conclusive of nothing more, for after that there would then arise the question, how is the court that is to administer the property to ascertain who is entitled to it? For that purpose you must look beyond the probate to know in what country the testator was domiciled, for, by the law of the country the property must be administered. Therefore, if the testator, in the case I have supposed, had given away all his property, consisting of £10,000, it would be the duty of the court that had to construe the will to say £5,000 only can go according to the direction of the will, and the other £5,000 must go in some other channel.

Therefore, I think it is clear that that proposition is one that cannot be maintained."

And Lord Wensleydale, while giving his own definition as to what constitutes domicil of a testator, said: "I take it to be a perfectly clearly established proposition at this day, confirmed by the case of Stanley *v.* Bernes, 3 Hagg, Eccl. R., 373, that the succession must be regulated according to the law of that country where the deceased was domiciled at the time of his death, and that to make a valid will it must be executed according to the forms of the law of that country."

As I have already stated, it is freely conceded by the appellee that the paper produced here for probate is wholly void and without effect by the law of the State of Georgia, because not attested by more than one witness. But if it be true, that the deceased was, at the time of his death, domiciled in this District, then the paper, though attested by one witness only, is a good and valid testamentary paper, and is therefore entitled to be admitted to probate here. The important question, therefore, to be determined on the trial of the issues framed on the caveat to the paper was the question of domicil of the deceased at the time of his death—whether in the State of Georgia or in this District of Columbia. I am of opinion that the Georgia record of the grant of administration in that jurisdiction ought to have been admitted in evidence to the jury, in connection with the conceded facts that the deceased was a citizen of Georgia, that the paper in contest was executed in that State, and that the deceased died in that State soon after the paper was made.

But, as the case has been decided by the court below, and affirmed by a majority of this court, the question will arise, what practical effect can be given to the probate and letters of administration that have been granted here? There is, as we have seen, an antecedent administration in the State of Georgia, founded upon the alleged domicil or residence of the deceased in that State at the time of his death, and that he died intestate; and moreover, all the property that the supposed testamentary paper and letters of administration granted here, could affect or operate upon, has been, under the
26 sanction of law and authority, withdrawn and taken to the jurisdiction of the original or first administration. It is hardly supposable that the courts of Georgia will give effect to the probate of the paper and letters of administration granted here regardless of their own local administration. It is well settled by the courts of that State, that the courts of ordinary there are courts of original, exclusive and general jurisdiction over decedents' estates, and the subject-matter of their orders and judgments *are* no more open to collateral attack than the judgments, decrees or orders of any other court. Veach *v.* Rice, 131 U. S., 293, 314; Davie *v.* McDaniel, 47 Ga., 195; Barnes *v.* Underwood, 54 Ga., 87; Arnold *v.* Arnold, 62 Ga., 627; Tant *v.* Wright, 65 Ga., 412. The case, therefore, necessarily presents, or will present, an unfortunate conflict of law and jurisdiction, and the only hope is that the Supreme Court of the United States, if the case should reach that tribunal, may find a way of overcoming the difficulty.

27 WEDNESDAY, *November 2d, A. D.* 1898.

ELIZABETH S. OVERBY, LEONORA H. PACE, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, Appellants,
vs.
FANNIE H. GORDON.
No. 809, October Term, 1898.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the order of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

November 2, 1898.

Dissenting, Mr. Chief Justice Alvey.

THURSDAY, *November 17th, A. D.* 1898.

ELIZABETH S. OVERBY, LEONORA H. PACE, KATE Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, Appellants,
vs.
FANNIE H. GORDON.
No. 809.

On motion of Mr. F. D. McKenney, of counsel for the appellants in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

28 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, appellants, and Fannie H. Gordon, appellee, a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

29 Know all men by these presents that we, Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, as principals, and American Bonding and Trust Company of Baltimore, Maryland, as surety, are held and firmly bound unto Fannie H. Gordon in the full and just sum of three hundred dollars ($300), to be paid to the said Fannie H. Gordon, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this first day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, appellants, and Fannie H. Gordon, appellee, a judgment was rendered against the said Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, appellants, and the said appellants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Fannie H. Gordon, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said appellants above named shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea

good, then the above obligation to be void; else to remain in full force and virtue.

ELIZABETH S. OVERBY, [SEAL.]
LEONORA H. PACE, [SEAL.]
KATE CULBERSON, [SEAL.]
PAUL BLECKLEY, [SEAL.]
LOGAN BLECKLEY, [SEAL.]
HARALSON BLECKLEY, [SEAL.]
By PHILLIPS & McKENNEY, *Att'ys-in-fact.*

[Seal of Amer. Bond'g & Trust Co.]

THE AMERICAN BONDING & TRUST CO. OF BALTIMORE CITY,
By L. O. DE LASHMUTT, *Attorney-in-fact.*

Sealed and delivered in the presence of—
—— ——.

Approved, not to act as a supersedeas, by—
R. H. ALVEY, *Chief Justice.*

[50c. internal-revenue stamp.]
[5c. internal-revenue stamp.]

[Endorsed:] No. 809. Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, appellants, *vs.* Fannie H. Gordon. Bond on writ of error to Supreme Court United States. Court of Appeals, District of Columbia. Filed Dec. 6, 1898. Robert Willett, clerk.

30 UNITED STATES OF AMERICA, *ss:*

To Fannie H. Gordon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted December 7, 1898.
HENRY E. DAVIS,
C. C. TUCKER,
For Defendant in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 7, 1898. Robert Willett, clerk.

31 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 30, inclusive, contain a true copy of the transcript of record and poceedings of said Court of Appeals in the case of Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, appellants, *vs.* Fannie H. Gordon, No. 809, October term, 1898, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 7th day of December, A. D. 1898.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

[Ten-cent U. S. internal-revenue stamp, canceled Dec. 7, '98. R. W.]

Endorsed on cover: File No., 17,214. District of Columbia Court of Appeals. Term No., 168. Elizabeth S. Overby, Leonora H. Pace, Kate Culberson, Paul Bleckley, Logan Bleckley, and Haralson Bleckley, plaintiffs in error, *vs.* Fannie H. Gordon. Filed December 9th, 1898.